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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

Sheila Sullivan Polk, in her capacity  
as Yavapai County Attorney,

Plaintiff,

vs.

Hawaiian Honey Swimwear LLC dba  
Hawaiian Honey; Giannico Family Trust;  
Alphonso Giannico and Cynthia Giannico,  
Trustees of Giannico Family Trust; Steven  
Ogden dba Pipe Dreamz Smoke Shop;  
Munday Living Trust; David Munday and  
Lorraine Lovel, Trustees of the Munday  
Living Trust; A & N Arizona Enterprises,  
Inc. dba Prescott Quick Stop; Willis Family  
Trust; William Willis and Joanne Willis,  
Trustees of the Willis Family Trust; Hardip  
Singh; Lewman LLC dba Mike's Mini  
Market; The Island Store LLC dba The  
Island Store; Wes Lance dba Wes Lance  
Trading Co.; Coffey Commercial Center  
LLC; Paula Farley dba X-Hale Smoke Shop;)

Case No. P1300CV2012 80342

Division PTA

MOTION FOR PRELIMINARY  
INJUNCTION, PERMANENT INJUNCTION  
AND  
TEMPORARY RESTRAINING ORDER

ORIGINAL FILED THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_

SANDRA K MARKHAM  
Clerk of Superior Court

By: \_\_\_\_\_ Deputy *Jacqueline Harshman*

AUG 09 2012

1 Quesnell Property Management Grand )  
2 Prairie LLC; Nabulsy, LLC dba Mario's PV) )  
3 Quick Stop; Fernando Gonzalez; Eyup )  
4 Ozaltin dba Mike's Connection, LLC; )  
5 B-Desh Enterprises, LLC dba Texaco; )  
6 Texaco Refining and Marketing, Inc.; )  
7 Daniel Wildes dba Hobby Glass; Charlene )  
8 Karecki and Donald Karecki; Jeffrey Russell )  
9 dba Smoke N Thingz; Maneely Family )  
10 Irrevocable Trust; Jason Maneely and )  
11 Cynthia Maneely, Trustees of the Maneely )  
12 Family Irrevocable Trust; John and Jane )  
13 Does I - X, and Doe Corporations I - X, )  
14 Defendants. )

11  
12 Plaintiff Sheila Polk, in her capacity as the Yavapai County Attorney, by and through her  
13 undersigned deputies, hereby moves this court for the following orders:

14 (1) For a Temporary Restraining Order, without notice to Defendants, enjoining  
15 Defendants, and any and all other persons in concert or participation with them, from acquiring,  
16 possessing, selling or transferring any and all synthetic cannabinoids and cathinones (referred to  
17 as "dangerous synthetic drugs" and known by street names such as, but not limited to: "Go Fast,"  
18 "K2," "Spice," "Sprinklezz," "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt  
19 Cleaner," "Go Fast Carpet Cleaner," "Exuberance Powder," "Tickle Talc," and "Bath Salts"), and  
20 any substance that meets the definition of an Analogue drug pursuant to 21 U.S.C. §§ 802(32)(A)  
21 and 813.

22  
23 (2) For an Order directing Defendants to Appear before this Court within 10 days of the  
24 Court's Order and show cause, if any there may be, why this Court should not issue a Preliminary  
25 Injunction enjoining Defendants, and any and all other persons in concert or participation with  
26 them, from acquiring, possessing, selling or transferring any and all synthetic cannabinoids and

1 cathinones (referred to as “dangerous synthetic drugs” and known by street names such as, but  
2 not limited to: “Go Fast,” “K2,” “Spice,” “Sprinklezz,” “Incense,” “Potpourri,” “Herbal Sachets,”  
3 “Glass Cleaner,” “Felt Cleaner,” “Go Fast Carpet Cleaner,” “Exuberance Powder,” “Tickle Talc,”  
4 and “Bath Salts”), and any substance that meets the definition of an Analogue drug pursuant to 21  
5 U.S.C. §§ 802(32)(A) and 813, pending a trial on the merits;

6  
7 (3) For an Order accelerating the trial on the merits in this matter and consolidating the  
8 same with the hearing on the Court’s Order to Show Cause;

9 (4) For Preliminary and Permanent Orders enjoining Defendants, and any and all other  
10 persons in concert or participation with them, from acquiring, possessing, selling or transferring  
11 any and all synthetic cannabinoids and cathinones (referred to as “dangerous synthetic drugs” and  
12 known by street names such as, but not limited to: “Go Fast,” “K2,” “Spice,” “Sprinklezz,”  
13 “Incense,” “Potpourri,” “Herbal Sachets,” “Glass Cleaner,” “Felt Cleaner,” “Go Fast Carpet  
14 Cleaner,” “Exuberance Powder,” “Tickle Talc,” and “Bath Salts”), and any substance that meets  
15 the definition of an Analogue drug pursuant to 21 U.S.C. §§ 802(32)(A) and 813.  
16

17 This Motion is supported by the following Memorandum of Points and Authorities.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **INTRODUCTION**

20 This action is brought pursuant to A.R.S. § 13-2917 by the Yavapai County Attorney as  
21 representative of the people of Yavapai County, who asks the Court to abate activities of the  
22 Defendants that constitute a public nuisance. Defendants are selling, or allowing to be sold,  
23 dangerous synthetic drugs (commonly called “Novelty Powder” drugs) that present a serious and  
24 ongoing health hazard to the public. The possession and sale of these “Novelty Powder” drugs is  
25 illegal under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq. As detailed in the  
26

1 over 100 affidavits attached to this Motion, users of these dangerous "Novelty Powder" synthetic  
2 drugs sold by the Defendants engage in violent, bizarre and dangerous behavior, presenting a  
3 serious health and safety concern to themselves, to law enforcement officers, to the emergency  
4 first responders and medical personnel that attempt to treat the sickness and injuries resulting  
5 from these dangerous drugs, and the general citizenship of the county through increased crime  
6 and violence. Children and adults are suffering severe injuries and death as a result of the use of  
7 these dangerous synthetic drugs.  
8

9 By selling or allowing these dangerous "Novelty Powder" synthetic drugs to be sold, the  
10 Defendants are engaging in illegal activity that seriously threatens the health, safety, and welfare  
11 of all of the citizens of Yavapai County. The activities of the Defendants thus constitute a public  
12 nuisance under A.R.S. §13-2917 and the common law. Plaintiff petitions this Court for orders  
13 permanently enjoining Defendants from engaging in the acquisition, possession, sale and/or  
14 transfer of these dangerous synthetic drugs pursuant to A.R.S. §13-2917 and the common law.  
15

16 Defendants have been warned of the dangerous effects of "Novelty Powder" synthetic  
17 drugs, and that their possession and sale of these drugs is a violation of the federal Controlled  
18 Substances Act, yet they continue to possess and sell these dangerous synthetic drugs. Because  
19 the substances represent such a dangerous and immediate threat to the health and safety of the  
20 citizens of Yavapai County, and because Defendants know they are dangerous and possession and  
21 sale is a violation of federal law, the Court should issue Temporary Restraining Orders without  
22 notice to Defendants, and Preliminary Injunctions against the Defendants, forbidding them from  
23 selling, transferring or further acquiring any substance that meets the definition of an Analogue  
24 drug pursuant to 21 U.S.C. §§802(32)(A) and 813, pending a trial on the merits.  
25  
26

1     **STATEMENT OF FACTS**

2             The Defendants in this action operate retail stores, or are the owners of the real property  
3     on which these retail stores operate. As part of the retail operation, Defendants are selling or  
4     allowing to be sold merchandise commonly called "Novelty Powder" drugs which are versions of  
5     powerful synthetic *illegal* drugs known as cannabinoids and cathinones. *See Exhibits F-4, F-5, F-*  
6     *19, F-20.* While the particular versions of the "Novelty Powder" drugs Defendants are holding  
7     and offering for sale or allowing to be sold are not currently illegal under Arizona law, the sales  
8     of these drugs are a public nuisance in that the "Novelty Powder" drugs being distributed by  
9     Defendants are injurious to the health and safety of a substantial number, if not all, of the  
10    residents of Yavapai County.

11            ***Cannabinoids and Cathinones - Dangerous Synthetic drugs.*** The drugs Defendants sell  
12    or allow to be sold include ***Cannabinoids***, a group of synthetically made psycho-active drugs  
13    similar to the active ingredients of cannabis or marijuana (*Merriam-Webster MedlinePlus*,  
14    <http://www.merriam-webster.com/medlineplus/cannabinoids>.); ***Cathinones***, a group of  
15    synthetically made psycho-active drugs similar to monoamine alkaloids found in the shrub *Catha*  
16    *edulis* (khat), chemically similar to ephedrine, cathine and other amphetamines (*National Institute*  
17    *of Health -National Institute for Biotechnology Information*,  
18    <http://www.ncbi.nlm.nih.gov/pubmed/22108839>).

19            Manufactured cannabinoids and cathinones are known by a variety of names including  
20    "Spice" or "K-2" (typical for cannabinoids), "bath salts" (typical for cathinones) and collectively  
21    known as "Novelty Powder" drugs.

22            As a group, "Novelty Powder" drugs are synthetically produced variants of dangerous  
23    drugs that are illegal under Arizona law. *See A.R.S §13-3401(6)(b)(v), (vi), (xiv), (xix), (xxi),*

1 (xxii), (xxiii), (xxvi) (cathinones); §13-3401(6)(a)(xxxiv)-(xlili), §13-3401(20)(w)  
2 (cannabinoids). However, because the "Novelty Powder" drugs are synthetically made, chemical  
3 alteration of the drugs is easily and cheaply done. Slight alteration in chemical composition  
4 creates an "Analogue" drug – a drug that is slightly different chemically from a banned drug, but  
5 one that has an almost identical effect on the human body as the chemically similar (and  
6 dangerous) illegal drug. The "Novelty Powder" drugs sold by the Defendants are Analogue drugs  
7 to those banned by Arizona law.  
8

9 Because the chemical formulation of an Analogue drug is slightly different from the  
10 chemical formula of the parent (banned) drug, it is not criminally unlawful in Arizona to  
11 manufacture, possess, or sell until the State legislature acts to specifically ban the new chemical  
12 formulation. Thus, in Arizona, the criminal justice system has been engaged in a "cat-and-mouse"  
13 game with the manufacturers and sellers of "Novelty Powder" drugs. When in 2011 and 2012 the  
14 Arizona legislature outlawed specific versions of the drugs, the manufacturers created slightly  
15 different, and therefore legal, Analogues of "Novelty Powder" drugs by slightly altering the  
16 chemical makeup of the drugs so they no longer fit the statutory definition of the illegal drug. 21  
17 U.S.C.A. § 802 defines an "Analogue drug": as:  
18

19 (32)(A) Except as provided in subparagraph (C), the term "controlled substance  
20 analogue" means a substance—

21 (i) the chemical structure of which is substantially similar to the chemical  
22 structure of a controlled substance in schedule I or II;

23 (ii) which has a stimulant, depressant, or hallucinogenic effect on the  
24 central nervous system that is substantially similar to or greater than the stimulant,  
25 depressant, or hallucinogenic effect on the central nervous system of a controlled  
26 substance in schedule I or II; or

(iii) with respect to a particular person, which such person represents or  
intends to have a stimulant, depressant, or hallucinogenic effect on the central  
nervous system that is substantially similar to or greater than the stimulant,  
depressant, or hallucinogenic effect on the central nervous system of a controlled  
substance in schedule I or II.

1 Under federal law Analogue drugs are illegal. As Analogue drugs, under the federal Controlled  
2 Substances Act, possession or sale of the "Novelty Powder" drugs by the Defendants is illegal.  
3 21 U.S.C. §802(32)(A); 21 U.S.C. §813. See also Exhibits C-1 and C-2 (Casandra Prioleau,  
4 Ph.D, Pharmacologist with DEA Drug and Chemical Evaluation Section; Thomas DiBerardino,  
5 Ph.D., Chemist with DEA Drug and Chemical Evaluation Section.)  
6

7 ***The dangerous effects of synthetic drugs.*** "Novelty Powder" drugs have proven to be a  
8 dangerous threat to the health of the people of Yavapai County. Attached to this Motion for  
9 Temporary Restraining Order and Preliminary and Permanent Injunctions are over 100 affidavits  
10 from Yavapai County community leaders, sworn law enforcement and probation officers, medical  
11 professionals, mental health care professionals, forensic scientists, education professionals, public  
12 health officials, and citizens of Yavapai County. See Exhibits A-1 to J-6. The affidavits document  
13 how these leaders, professionals, and citizens have personally experienced the dangerous effects  
14 of these dangerous synthetic drugs.  
15

16 ***Medical Professionals.*** Affidavits contained in Exhibit "B" document the personal  
17 experiences of medical professionals in Yavapai County of the harm they have seen caused by  
18 "Novelty Powder" drugs. The affidavits prove ingestion of "Novelty Powder" drugs often leads to  
19 life threatening illness and injury. Doctors report physical symptoms that include dangerously  
20 high body temperature (hyperthermia), dangerously high heart rate and blood pressure,  
21 arrhythmia, permanent organ damage, heart attacks and stroke. See Exhibit B-10 (Dr. Martin  
22 DeKort, Yavapai Regional Medical Center); B-11 (Dr. Harry Alberti, Medical Director, Verde  
23 Valley Medical Center); B-12 (Doctor Kelly Robinson, Director, Verde Valley Medical Center).  
24 They also report that patients under the influence of "Novelty Powder" drugs exhibit bizarre,  
25 threatening, and unpredictable behavior.  
26

1 The "Novelty Powder" drugs cause serious psychotic symptoms as well. Users experience  
2 hallucinations and paranoia, often becoming unpredictably aggressive and unreasonable ("out of  
3 their minds"), and can display inexhaustible strength and stamina. *See Exhibits B-4 (Michael*  
4 *Connally, EMT); B-5 (Royce Taghon, EMT); B-10 (Dr. Martin DeKort, Yavapai Regional*  
5 *Medical Center)); B-11 (Dr. Harry Alberti, Medical Director, Verde Valley Medical Center); B-*  
6 *12 (Kelly Robinson, Emergency Department Medical Director, Verde Valley Medical Center).*  
7 Users will often become physically aggressive toward paramedics, doctors, and nurses trying to  
8 treat them for sickness and injury caused by these dangerous synthetic drugs without reason, enter  
9 the homes and businesses of others without reason, and injure themselves without reason. The  
10 psychotic effects of these dangerous synthetic drugs often last for days, longer than  
11 methamphetamine or cocaine. *See Exhibit B-10 (Dr. DeKort).* Emergency Department directors  
12 in the Prescott area and the Verde Valley report a steady flow of patients coming to their hospitals  
13 for emergency treatment of sickness and injury due to "Novelty Powder" drugs. Dr. DeKort  
14 reports that Yavapai Regional Medical Center is seeing an average of ten (10) patients per week  
15 presenting to the Emergency Department with sickness or injury due to dangerous synthetic  
16 drugs. *See Exhibit B-10. B-12.* Dr. Kelly Robinson reports an average of 1 to 2 patients per day in  
17 the emergency rooms of the Sedona and Cottonwood Campuses of the Verde Valley Medical  
18 Center presenting with sickness or injury due to dangerous synthetic drugs. *See Exhibit B-12,*  
19 *Kelly Robinson, Emergency Department Medical Director, Verde Valley Medical Center).* In  
20 addition, the Arizona Poison Control Information Center reports there has been a marked increase  
21 in calls for help from Yavapai County due to dangerous synthetic drugs. *See Exhibit B-8.*

22 The affidavits report that children and adults that ingest these drugs are hospitalized with  
23 life-threatening conditions as a result of ingesting these dangerous drugs.  
24  
25  
26



1           ***Law Enforcement and public safety.*** Affidavits contained in Exhibit "F" are affidavits  
2 from Law Enforcement Officers throughout the county, including the Yavapai County Sheriff's  
3 Office, the Prescott Police Department, the Prescott Valley Police Department, Chino Valley  
4 Police Department, the Camp Verde Marshall's Office, Jerome Police Department, the Yavapai-  
5 Apache Indian Tribe, the Yavapai-Prescott Indian Tribe, the US Forest Service, the Arizona  
6 Department of Public Safety, and the Sedona Police Department. All are reporting a serious  
7 increase in the use of dangerous "Novelty Powder" drugs, as well as a serious increase in  
8 violence, injury, and death as a result of these drugs. Chief Charles Wynn of the Chino Valley  
9 Police Department notes that his officers routinely are involved in incidents involving dangerous  
10 synthetic drugs. *Exhibit F-8.* Chief Bill Fessler of the Prescott Valley Police Department reports a  
11 significant increase in the number of "Novelty Powder" drug related cases his agency has  
12 responded to in the last year. *Exhibit F-16.* Lieutenant Andy Reinhardt of the Prescott Police  
13 Department notes that juveniles are increasingly becoming users of "Novelty Powder" drugs  
14 because they can use them and still pass a drug screening for illegal drugs. *Exhibit F-9.*

15           Exhibit "G" consists of affidavits from adult and juvenile probation officers working for  
16 the courts of Yavapai County. The affidavits describe the negative effects "Novelty Powder"  
17 drugs have on those attempting to complete court sentences. Probationers are often tempted to use  
18 "Novelty Powder" drugs because they can be easily obtained and generally do not result in a  
19 positive drug test. However, as the affidavits show, the addictive nature of these drugs and the  
20 violent and bizarre behavior caused by the drugs will often cause probationers to fail probation.  
21 The probation officers describe probationers developing mental health problems such as paranoia  
22 and hallucinations as a result of these dangerous synthetic drugs, as well as a return to a life of  
23 crime.  
24  
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26

1 A heart-wrenching example of how dangerous these "Novelty Powder" drugs is found in  
2 the affidavit of Ross Diskin, Detective for the Yavapai County Sheriff (*Exhibit F-17*), along with  
3 the affidavits of the parents of Calvin Forrey, now deceased. (*Exhibits E-4 and E-6.*) Detective  
4 Diskin describes an incident that occurred in the Lynx Lake area. A young man named Calvin  
5 Forrey was running in the forest naked and "out of his mind" due to "Bath Salts." Calvin then  
6 stole a vehicle. When a Sheriff's Deputy located Calvin, he was naked and making "snow angels"  
7 on the pine-needle covered forest. When the deputy attempted to take Calvin into custody, he  
8 fought with the deputy for several minutes, then collapsed and stopped breathing. CPR was  
9 administered and eventually his breathing was restored. Calvin was taken to the hospital, where  
10 he subsequently died as a result of the effects of dangerous synthetic drugs. Calvin's mother and  
11 father describe their son's use of dangerous synthetic drugs and his downward spiral to his recent  
12 tragic death.  
13

14  
15 Death is not an uncommon result of the use of "Novelty Powder" drugs. Probation officer  
16 Justin Wetzel's affidavit tells the story of the very recent suicide of a probationer on his caseload  
17 due to "Novelty Powder" drugs. *Exhibit G-15*.

18 Noone in the county is safe from the potentially deadly effects of "Novelty Powder"  
19 drugs. In Exhibit F-12, Sgt. G. R. Manera of the Department of Public Safety describes an event  
20 that occurred just two days ago, on August 7, 2012. On that date, a serious traffic accident  
21 occurred in Prescott at the intersection of Highway 69 and Heather Heights Drive, just below the  
22 Prescott Resort. A vehicle traveling at a high rate of speed collided with four other vehicles  
23 resulting in the driver of the at-fault vehicle being flown to Flagstaff Medical Center with serious  
24 head injuries. Occupants of the other vehicles were also injured. The at-fault vehicle contained  
25 nine (9) vials of "Novelty Powder" drugs, as well as a receipt from Defendant "Smoke N Thingz"  
26

1 located in Prescott Valley dated August 7, 2012. It appears likely that the injured driver was  
2 under the influence of "Novelty Powder" drugs at the time of the accident.

3 ***Mental Health Providers.*** Affidavits in Exhibit "C" are from mental health professionals  
4 serving Yavapai County. The affidavits describe how "Novelty Powder" drugs not only prevent  
5 effective substance abuse and mental disorder treatment, but that the use of these dangerous  
6 synthetic drugs can actually create mental disorder in users.

7  
8 ***Yavapai County Schools.*** Affidavits in Exhibit "I" describe the serious consequences  
9 "Novelty Powder" drugs are having on Yavapai County Schools. These dangerous synthetic  
10 drugs have found their way into schools, causing serious injury to the children that take them, and  
11 serious disruption of the school's mission and purpose.

12 ***Users, Parents and Citizens.*** The affidavits contained in Exhibits "A" "J" and "E" are  
13 statements from former users of "Novelty Powder" drugs, parents of users, and from concerned  
14 Yavapai County citizens. Some of these exhibits are filed under seal with the Court because they  
15 contain confidential information about the affiant.

16  
17 The affidavits of the users and their parents can be especially chilling. Users describe  
18 serious injury panic, paranoia, suicidal thoughts, complete black-outs and a host of other physical  
19 and mental problems from using "Novelty Powder" drugs. Parents describe children that turn  
20 from well-behaved youths to gaunt shells of their former selves that lie and steal to support their  
21 "Novelty Powder" habit. The children develop chronic and severe mental and physical disorders.  
22 In one instance the parent describes the death of their child do directly to "Novelty Powder"  
23 drugs.

24  
25 ***Summary.*** The Exhibits attached show that "Novelty Powder" synthetic drugs create  
26 serious health hazards for users and those forced to confront their violent and bizarre behavior.

1 Emergency first-responders (law enforcement officers, paramedics, and firefighters) attempting to  
2 care for individuals acting "out of their minds" as a result of these dangerous "Novelty Powder"  
3 drugs are being physically endangered by the bizarre and unpredictable behavior caused by the  
4 drugs. Hospital employees are being endangered by "Novelty Powder" drugs because of the  
5 dangerous aggressive behavior of users under the influence of these drugs, as well as the chronic  
6 mental health issues resulting from use of the drugs. Public and private school employees are  
7 endangered by the use of "Novelty Powder drugs by students acting in bizarre and dangerous  
8 manners. The resources of law enforcement and medical care in the county are being diverted to  
9 cope with these dangerous drugs, taking resources away from these important missions. The  
10 public at large is endangered by "Novelty Powder" drugs as a result of increased crime in the  
11 form of bizarre and threatening behavior toward others, including assault, burglary, and property  
12 theft. Users of "Novelty Powder drugs are endangered by these drugs because the drugs cause  
13 bizarre and dangerous actions by the users while under the influence of the drugs, and chronic  
14 mental health disorders plaguing users for an unknown period of time.

15 **APPLICABLE LAW**

16 A.R.S. §13-2917 (A) states in part:

17 It is a public nuisance, and is no less a nuisance because the extent of the  
18 annoyance or damage inflicted is unequal, for anything: 1. To be injurious to  
19 health, indecent, offensive to the senses or an obstruction to the free use of  
20 property that interferes with the comfortable enjoyment of life or property by an  
21 entire community or neighborhood or by a considerable number of persons.

22 As the affidavits attached to this motion clearly attest, "Novelty Powder" drugs constitute  
23 a public nuisance pursuant to A.R.S. §13-2917 (A). The Yavapai County Attorney may bring an  
24 action in superior court to abate a public nuisance that is injurious to health pursuant to A.R.S. §  
25 13-2917(C).  
26

1 These "Novelty Powder" drugs also constitute a common law public nuisance. In  
2 *Mutschler v. City of Phoenix*, the court, citing the Restatement (Second) of Torts §821B, stated  
3 that at common law a public nuisance is "An unreasonable interference with a public right  
4 includes circumstances in which 'the conduct involves a significant interference with the public  
5 health, the public safety, the public peace, the public comfort or the public convenience.'" *Mutschler*, 212 Ariz. 160, 166, 129 P.3d 71, 77 (App. 2006). Clearly, the possession and sale of  
6 "Novelty Powder" drugs do constitute significant interference with public health, safety and  
7 peace.  
8

9  
10 In addition, conduct need not be criminal to constitute a public nuisance. "We hold,  
11 therefore, that conduct which unreasonably and significantly interferes with the public health,  
12 safety, peace, comfort or convenience is a public nuisance within the concept of tort law, even if  
13 that conduct is not specifically prohibited by the criminal law." *Armory Park Neighborhood Ass'n*  
14 *v. Episcopal Cmty. Services in Arizona*, 148 Ariz. 1, 10, 712 P.2d 914, 923 (1985)  
15

16 Once a public nuisance is found, the courts have a duty to abate the nuisance. In *Heyne v.*  
17 *Loges*, 68 Ariz. 310, 205 P.2d 586 (1949), the Arizona Supreme Court addressed the duty of a  
18 court to grant an injunction prohibiting the use of real property as a "common gambling house,"  
19 (an illegal activity) and stated "Under the authority of *State v. Phoenix Sav. Bank & Trust Co.*,  
20 *supra*, the trial court had the power *and the duty* to enjoin the *unlawful* use of the premises by  
21 these defendants and it constituted a clear abuse of judicial discretion to deny the injunctive relief  
22 which was asked for." *Id.* at 68 Ariz. 313, 205 P.2d 588 (emphasis added).  
23

## 24 ARGUMENT

25 There is little doubt that "Novelty Powder" drugs are a public nuisance as defined by  
26 A.R.S. §13-2917(A) and by the common law. See *Mutschler*, 212 Ariz. At 166, 129 P.3d at 77.

1 First, "Novelty Powder" drugs are Analogue drugs and therefore possession and transfer of these  
2 dangerous drugs is illegal under federal law. *21 U.S.C. §802(32)(A); 21 U.S.C. §813*. They are  
3 illegal under federal law because, as we are experiencing in Yavapai County, "Novelty Powder"  
4 drugs are creating significant, even deadly health issues for large numbers of people including  
5 many children because of the bizarre and violent effect the drugs have on its users. Citizens of  
6 Yavapai County suffer serious physical injury and even death as a result of these dangerous  
7 drugs. Law enforcement, first responders, and medical professionals in the county face the serious  
8 threat of physical injury as a result of "Novelty Powder" drugs. The users themselves face the real  
9 threat of physical harm or death.

10  
11 Large numbers of Yavapai County citizens are subject to random acts of violence and  
12 theft by crazed individuals under the influence of these drugs. Those that maintain order and  
13 health in our community such as law enforcement officers, paramedics, doctors and nurses are  
14 met with by violent resistance when they try to lawfully restrain or assist an individual under the  
15 influence of these dangerous drugs, often with the law enforcement officer or medical  
16 professional incurring injury themselves as a result of the violence caused by these dangerous  
17 drugs. Children are obtaining "Novelty Powder" drugs, with serious health consequences to them,  
18 to their parents, and to the county school system. Significant numbers of Yavapai County citizens  
19 are users of these dangerous drugs, and as a result place themselves in great danger – they engage  
20 in dangerous and demented behavior such as stripping off their cloths and running naked in the  
21 woods, intentionally injuring themselves and provoking confrontations with others. In short, the  
22 menace presented by "Novelty Powder" drugs threatens large numbers of county residents,  
23 including children, as well as law enforcement and medical personnel within Yavapai County.  
24  
25  
26

1 The dangerous activity associated with "Novelty Powder" drugs is geographically  
2 widespread as well, occurring throughout the county. The Yavapai County Sheriff, as well as law  
3 enforcement from most of the cities and towns within the county, has reported many violent  
4 contacts with users of "Novelty Powder" drugs in all segments of the county. All of the major  
5 hospitals in the county have reported a substantial number of patients, both children and adult,  
6 that report to the emergency room with life-threatening conditions brought on by the use of  
7 "Novelty Powder" drugs, as well as violent confrontations with those under the influence of the  
8 drugs. Most school districts within the county have reported that significant numbers of children  
9 are obtaining and using these drugs, leading to serious and sometimes life-threatening health  
10 issues for the child, violent confrontations between the child and school staff, and disruption of  
11 school mission and routine. Parents living throughout the county have reported the serious  
12 consequences for their children resulting from the child's use of "Novelty Powder" drugs,  
13 including hospitalization, delinquency, and long term mental health issues. Citizens throughout  
14 the county have reported incidents of bizarre and violent behavior from individuals under the  
15 influence of "Novelty Powder" drugs. In sum, the health menace presented by "Novelty Powder"  
16 drugs is widespread in Yavapai County, and growing.

19 Defendants' possession and sale (or their knowing acquiescence to the use of their  
20 property for the keeping and sale) of dangerous "Novelty Powder" drugs also constitutes a public  
21 nuisance under the common law.

### 22 PRELIMINARY INJUNCTION

23  
24 "Under the authority of State v. Phoenix Sav. Bank & Trust Co., supra, the trial court had  
25 the power *and the duty* to enjoin the *unlawful* use of the premises by these defendants and it  
26 constituted a clear abuse of judicial discretion to deny the injunctive relief which was asked for."

1 *Heyne v. Loges*, 68 Ariz. 310, 313, 205 P.2d 586, 588 (1949) (emphasis added). As detailed  
2 above, “Novelty Powder” drugs represent an immediate and serious threat to the health, safety,  
3 and peace of the citizens of Yavapai County. Plaintiff is entitled to a Preliminary Injunction  
4 ordering that the Defendants cease sale or other distribution of the dangerous “Novelty Powder”  
5 drugs, and that they refrain from the acquisition of such drugs. Plaintiff can show that there is a  
6 strong likelihood she will prevail on the merits of the claims she asserts; that there is a possibility  
7 of irreparable injury that cannot be remediable by damages should the Defendant’s conduct not be  
8 enjoined; that the balance of hardships favors Plaintiff; and that public policy favors the requested  
9 relief. *See Powell-Cerkoney v. TCR-Montana Ranch Joint Venture*, 176 Ariz. 275, 860 P.2d 1328  
10 (App. 1993).

11  
12 The drugs possessed, sold or allowed to be sold by the Defendants are creating an  
13 immediate and serious health hazard in Yavapai County. Substantial numbers of Yavapai County  
14 citizens – including law enforcement and health care professionals, some of the most valuable  
15 members of our community – are every day having their safety, health, and even lives threatened  
16 by the effect of these “Novelty Powder” drugs. In possessing, selling or allowing the sale of these  
17 drugs on their property, Defendants are actively engaged in violating the federal Controlled  
18 Substances Act. There can be little doubt that the activity of the Defendants with regard to  
19 “Novelty Powder” drugs constitutes a public nuisance. Plaintiffs have a strong likelihood of  
20 success on the merits of their Complaint.  
21  
22

23 The people of Yavapai County face a strong likelihood of irreparable injury if injunctive  
24 relief is not granted. Use of “Novelty Powder” drugs often leads to violent and bizarre behavior  
25 that threatens the health of Yavapai County citizens. Every day that the dangerous “Novelty  
26 Powder” drugs are sold is another day that seriously threatens the health and even the very lives



1 of the citizens of Yavapai County. Simply put, these drugs can kill people. These dangerous drugs  
2 are being sold to children who have substantially less experience and skill in assessing the risk of  
3 ingesting unknown drugs in their bodies. First responders and medical personnel such as law  
4 enforcement, paramedics, doctors and nurses risk serious injury or death, as a result of the  
5 activities of the Defendants in distributing these dangerous drugs. Finally, very day all citizens of  
6 Yavapai County have to face the possibility that a "Novelty Powder" drug user will threaten them  
7 with bizarre and violent behavior. Clearly, the death and serious injury constitutes irreparable  
8 injury, and cannot be compensated by mere damages alone.

9  
10 The balance of hardships is in favor of the citizens of Yavapai County. As noted above,  
11 the citizens of Yavapai County face serious threats to their health, safety and enjoyment of  
12 property as a result of the distribution of these drugs. People may die, or be seriously injured. In  
13 contrast, Defendants face the minor monetary loss of their profit from the sale of dangerous  
14 drugs.

15  
16 Public policy favors the requested relief. The police power of the state includes the  
17 responsibility to regulate matters that affect the health and safety of its citizens. Arizona prohibits  
18 the possession and sale of Analogues to these "Novelty Powder" drugs sold by the Defendants,  
19 and it is only by virtue of the speed by which the chemical make-up of "Novelty Powder" drugs  
20 can be changed that keeps them one step ahead of the Arizona legislature. However, note that the  
21 possession of these drugs is illegal under the federal Controlled Substances Act, a clear and  
22 unequivocal statement as to where public policy stands on this issue. Clearly, public policy is in  
23 favor of enjoining acquisition, possession or transfer of "Novelty Powder" drugs.  
24  
25  
26

1 Plaintiff request that the Court order that the trial on the merits of this matter be  
2 accelerated pursuant to Rule 65(A)(2) of the Arizona Rules of Civil Procedure and consolidated  
3 with the hearing on Yavapai County's Application for Preliminary Injunction.

4 **TEMPORARY RESTRAINING ORDER**

5 Pursuant to Rule 65(d) of the Ariz. Rules of Civil Procedure, the Court may issue a  
6 Temporary Restraining Order without notice if it appears from affidavit or verified Complaint  
7 that immediate and irreparable injury, loss or damage will result to the applicant before the  
8 adverse party or that party's attorney can be heard in opposition, and that the applicant certifies  
9 the efforts made to give notice of the request to the adverse party, or states why notice should not  
10 be required.

11 The Plaintiff acts as the representative for the people of Yavapai County in this matter.  
12 This Complaint details the immediate and irreparable injury, loss or damage to the people of  
13 Yavapai County is highly likely should the Defendants continue to engage in the acquisition,  
14 possession or sale of these "Novelty Powder" drugs. The Defendants are engaged in the  
15 possession and sale of dangerous illegal drugs in violation of the federal Controlled Substances  
16 Act.  
17

18 Defendants have had notice that their acquisition, possession and sale of "Novelty  
19 Powder" drugs are creating substantial harm to the health and safety of the county. Law  
20 enforcement agents working with the Plaintiff have informed the Defendants selling "Novelty  
21 Powder" drugs that despite the Defendants' claims that the drugs are "not for human  
22 consumption" and "for novelty use only," that all of the drugs sold will be consumed by children  
23 and adults. The Defendants were told that consuming the "Novelty Powder" drugs sold by the  
24 Defendants will likely lead to bizarre and violent behavior when taken, that consuming these  
25  
26

1 "Novelty Powder" drugs can lead to death or serious medical emergencies, and that consuming  
2 these drugs can lead to chronic mental health issues. Defendants have been told that possessing  
3 and selling these drugs is illegal under federal law. Defendants have been fully informed that that  
4 their actions in selling these drugs represent a serious threat to the public health and safety of  
5 Yavapai County. Notice was given to Defendants that legal action would be taken against them if  
6 they did not stop selling "Novelty Powder" drugs. The Defendants have refused to stop  
7 possessing or selling these dangerous drugs.

8  
9 The menace posed by these dangerous drugs to the community is simply too high to allow  
10 Defendants to deal these dangerous drugs for another day. Simply put, the life of one person,  
11 whether a child or an adult is irreplaceable and Defendants are putting all of the citizens of  
12 Yavapai County at risk of death or serious injury with their behavior. Given the severe danger  
13 these drugs represent to the citizens of Yavapai County, the knowing and flagrant violation of  
14 federal law by the Defendants, and Plaintiff's notification to the Defendants of possible legal  
15 action, a Temporary Restraining Order, issued without notice of the current action to the  
16 Defendants, is justified.  
17

18  
19 **WHEREFORE Plaintiff requests that this Court:**

- 20 1. Grant a temporary restraining order pursuant to Rule 65(d) of the Arizona Rules of Civil  
21 Procedure that enjoins all Defendants, and any and all other persons in concert or  
22 participation with them, from acquiring, possessing, selling or transferring any and all  
23 synthetic cannabinoids and cathinones (referred to as "dangerous synthetic drugs" and  
24 known by street names such as, but not limited to: "Go Fast," "K2," "Spice," "Sprinklezz,"  
25 "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt Cleaner," "Go Fast  
26 Carpet Cleaner," "Exuberance Powder," "Tickle Talc," and "Bath Salts"), and any

- 1 substance that meets the definition of an Analogue drug pursuant to 21 U.S.C. §§
- 2 802(32)(A) and 813 pending final determination in this case;
- 3 2. Order that the Trial on the Merits of this matter be accelerated pursuant to Rule 65(a)(2) of
- 4 the Arizona Rules of Civil Procedure so that the trial may be consolidated with the hearing
- 5 on Plaintiffs Application for Preliminary Injunction;
- 6
- 7 3. Set a Hearing for a Preliminary Injunction and Trial on the Merits to abate Defendants'
- 8 public nuisance;
- 9
- 10 4. Enter a Preliminary and Permanent Injunction on Final Hearing pursuant to Rule 65(a) of
- 11 the Arizona Rules of Civil Procedure perpetually enjoining Defendants, and any and all
- 12 other persons in concert or participation with them, from acquiring, possessing, selling or
- 13 transferring any and all synthetic cannabinoids and cathinones (referred to as "dangerous
- 14 synthetic drugs" and known by street names such as, but not limited to: "Go Fast," "K2,"
- 15 "Spice," "Sprinklezz," "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt
- 16 Cleaner," "Go Fast Carpet Cleaner," "Exuberance Powder," "Tickle Talc," and "Bath
- 17 Salts"), and any substance that meets the definition of an Analogue drug pursuant to 21
- 18 U.S.C. §§ 802(32)(A) and 813.
- 19
- 20 5. Award Yavapai County its court costs incurred in pursuit of this action;
- 21
- 22 6. Order that the Court shall retain jurisdiction in this matter for the purpose of enforcing the
- 23 judgment and orders prayed for herein;
- 24
- 25
- 26

///

7. Such other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of August, 2012.

By: Sheila Spill  
SHEILA SULLIVAN POLK  
YAVAPAI COUNTY ATTORNEY

VERIFICATION

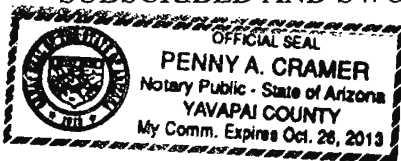
STATE OF ARIZONA       )  
  ) ss.  
County of Yavapai       )

Sheila Sullivan Polk, being duly sworn, upon oath deposes and says: That she is the Yavapai County Attorney; that she has read the foregoing Complaint and that all the facts stated therein are true to the best of her knowledge, information, and belief.

DATED: August 9, 2012.

Sheila Spill  
SHEILA SULLIVAN POLK  
YAVAPAI COUNTY ATTORNEY

SUBSCRIBED AND SWORN to before me this 9<sup>th</sup> day of August, 2011.



Penny A. Cramer  
Notary Public

My Commission Expires:

10-26-2013